* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl. M.C. No. 6426-27/2006**

% Date of Decision: 29th November, 2007

\# **Smt. Saroj Jain & Anr.** .....Petitioners

! Through Mr. Vikas Pahwa, Advocate

versus

$ **State of NCT of Delhi & Anr.** ..... Respondents

^ Through Mr. O.P. Saxena, Advocate for the State.

Mr. N.K. Sharma, Advocate for Respondent no. 2.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

By this petition under Section 482 of the Code of Criminal Procedure, 1973 the petitioners are seeking quashing of FIR no. 378/2004 for the offences under

Sections 384/120-B of Indian Penal Code ('I.P.C.' in short) registered against them and two others on 29.12.2004 at Police Station Dilshad Garden as well as the criminal proceedings arising therefrom pending in the Court of Additional Chief Metropolitan Magistrate, Delhi.

2. Relevant facts are that the marriage between one Nisha Jain, who is the daughter of petitioner no. 1 and Naveen Jain, who is the son of respondent no. 2 was solemnized on 18.07.2002 according to Hindu rites and ceremonies at Meerut. During her stay at the matrimonial house some disputes arose between Nisha Jain and her in-laws including her husband which led to registration of the FIR no. 78/2004 at Meerut against them at the instance of petitioner no. 1 herein for the offences under Sections 498A/323/307/506 I.P.C.

3. It has been alleged in the present petition that in order to implicate the petitioners in a false case because of their having got the FIR registered against the mother-in-law of Nisha Jain(respondent no. 2 herein) got registered the present case under Sections 384/120-B I.P.C. as a counter-blast.

4. The case of the prosecution in the present case is that on 29.07.2004 the petitioners, out of whom petitioner no. 1 is the mother of Nisha Jain and petitioner no. 2 is the brother of Nisha Jain along with Virender Singh Tyagi (who according to the petitioner is a witness of the incident which had led to the registration of a case under Sections 498-A/323/307/34 IPC vide FIR No.78/2004 at Meerut against respondent no. 2 herein and her other family members and against whom the

present case stands quashed) and one lady Saroj Chaudhary who claimed herself to be the U.P. Police official as a Sub-Inspector came to the house of respondent no. 2, mother in law of Nisha Jain and threatened her to implicate her in some false case and told her that they would take her to Meerut in case she would not pay Rs. 2,000/-. On her refusal to pay money to them the petitioners allegedly grabbed the complainant by her arms from the clutches of the petitioners and gave the money demanded to Saroj Chaudhary. The police after investigation filed a charge sheet in Court against the two petitioners and two others, namely, Virender Singh Tyagi and Saroj Chaudhary. The Metropolitan Magistrate after taking cognizance summoned them as accused. However, against accused Virender Singh Tyagi the FIR was quashed by this Court vide order dated 04.04.2006 passed in Crl.M.C. 5683/2005 filed by him.

4. The petitioners have also now sought quashing of the FIR as well the charge-sheet filed by the police qua them by way of this petition inter-alia on the grounds that the FIR against them is nothing but a counter blast to the complaint filed by the petitioner no.1 against respondent no.2-complainant and that the FIR was lodged after five months of the alleged incident. Further quashing of the case is sought on the ground of parity with co-accused Virender Singh Tyagi who was also charge-sheeted initially but case against him has been quashed. These very grounds were reiterated by the learned counsel for the petitioners at the time of hearing of this petition.

5. Learned APP and learned counsel for respondent no. 2 opposed the present petition for quashing of the charge sheet and the FIR on the ground that quashing of the case against co-accused has no effect on the case against the petitioners and also that delay aspect of the matter can be considered only during the trial if it remains unexplained.

6. I have given my thoughtful consideration to the rival submissions and have come to the conclusion that this petition has no merit and is liable to be dismissed. A bare perusal of the FIR shows that there are clear averments and allegations made against the petitioners which prima facie are sufficient for taking cognizance of the matter. Just because the case against one of the co-accused Varinder Singh Tyagi has been quashed by this Court accepting his plea of alibi based on the documents of the prosecution itself the petitioners cannot claim parity with him. It is now well settled that even when after trial prosecution case is rejected in respect of some of the accused persons by not believing the evidence of the witnesses other accused persons cannot claim that because of that reason the entire prosecution case should be rejected. In the present case, the trial is yet to begin and the trial Court is to consider the prosecution case in order to find out whether a case is made out or not for putting the petitioners to trial after framing of charges against them. In my view, the remedy under Section 482 Cr.P.C. cannot be availed of by the petitioners-accused at this stage for quashing of the FIR and the charge-sheet. It would, however, be open to them to make their

submissions before the concerned Court at the stage of consideration of charge that even after taking into consideration the material collected by the investigating agency during the investigation no case for framing of any charge against them is made out. I am in full agreement with the submission of learned counsel for respondent no. 2 that the effect of delayed FIR in the present case can be considered only during the trial and on this ground the charge-sheet cannot be quashed. This is not a case where it can be said that quashing of the FIR and the charge-sheet is desirable to prevent abuse of the process of law or to secure the ends of justice. Whether the present case registered at the instance of respondent no.2 or the one registered at the instance of the petitioner no. 1 against respondent no. 2 is false would be a matter to be considered by the concerned Courts where the same are pending consideration and at this stage it cannot be said that the present case is a false case having been lodged by the respondent no. 2 as a counter blast to the criminal case got registered against her and others by the petitioner no. 1.

7. This petition being devoid of any merit is accordingly dismissed.

November 29, 2007 **P.K.BHASIN,J**

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